



MEMORANDUM

To: TABC Commissioners, Management, Staff and Other Concerned Parties
From: Russell F. Thomas, Director
Date: February 8, 2021
Subject: Retail Operation Requirement for Retail Package Stores


Russell Thomas (Feb 8, 2021 14:57 CST)

This memorandum is the Tennessee Alcoholic Beverage Commission's ("TABC") official interpretation of the current statutes and TABC rules regarding the operational requirements to obtain or maintain a retail package store license and to operate a licensed retail package store. The issue presented in this memo is whether a package store license may be issued or held by a business that does not have retail floor space in which patrons may shop and purchase goods at its licensed premises but instead will be solely making online retail sales of alcoholic beverages for pick-up or delivery. For the reasons outlined in this memo, the TABC determines that a package store must operate a physical retail business open to the public which sells alcoholic beverages and other authorized items to the public at such physical retail business location during standard business hours, and a package store's licensed premises may not be solely used for storage of alcoholic beverages and the operation of an online-only alcoholic beverage retail business.

In 2014, the Tennessee General Assembly adopted Public Chapter 554 which was one of the largest changes of alcoholic beverage laws since the repeal of Prohibition in 1933 and the creation of the TABC in 1963. This sweeping legislation allowed certain grocery and convenience stores to be licensed to sell wine and it also greatly expanded the activities that a retail package store could perform, including authorizing a retail package store to deliver alcoholic beverages purchased by a consumer to that consumer at a location outside of the store's premises.

Before 2014, a package store could only sell alcoholic beverages at the licensed premises of the package store and generally could not engage in any other activities or services. At that time, there was no legitimate question that a package store must sell alcoholic beverages out of a physical retail store as there was no authority for a package store to sell any alcoholic beverages outside of that physical retail location. One of the clearest requirements of physical retail space was TCA § 57-3-404(f) which before 2014 had required that "[n]o wholesale or retail store shall be located except on the ground floor, and it may have one main entrance opening on a public street, and such place of business shall have no other entrance for use by the public except as hereafter provided." This made clear that the package store had to be a "place of business" that was "for use by the public". Notably, when the 2014 law was passed, the only change made to this subsection was to allow a package store up to two main entrances instead of only having one. The Tennessee General Assembly kept unchanged the requirements that the package store be a "place of business" that was "for use by the public". Therefore, the requirements that a package store have a physical retail location open to the public for retail shopping still exists today.

Another change enacted by the 2014 law, was to allow retail package stores to deliver. The 2014 law added TCA § 57-3-406(j)(1) to state that package stores “licensed under § 57-3-204 are authorized, for a fee or without a fee, to provide, within the state, consulting services ... and supply, deliver and install products authorized to be sold by the retailer to locations outside of the licensed premises in connection with special events, parties, alcoholic beverage tastings, educational classes and the establishment of private collections or wine cellars.” This change in law did not create a different business type, but rather it just expanded the services that a package store could perform. For example, it didn’t allow the creation of a new business that only delivered alcoholic beverages in connection with special events and educational classes without having a physical retail location, but rather once a business met all the legal requirements to operate a package store, including having a physical retail location meeting the requirements of TCA § 57-3-404(f), then that package store could then also perform such delivery. Indeed, the language stating that package stores “licensed under § 57-3-204 are authorized” to deliver means that a package store must first be licensed under 57-3-204 and meet all requirements to be so licensed before the authority to deliver applies. Also, this original language of TCA § 57-3-406(j)(1) only allowed delivery “in connection with special events, parties, alcoholic beverage tastings, educational classes and the establishment of private collections or wine cellars” and most of these terms are terms of art in the package store laws that only have meaningful effect if a package store operates a regular physical retail operation. For example, an educational class or educational seminar is authorized by 57-3-404(h) and TABC rule to allow package stores to hold certain events off of their licensed premises to help drive business at their licensed premises and this allowance would be moot if a package store’s licensed premises did not have to be a physical retail location. In 2016, Public Chapter 787 was passed which changed TCA § 57-3-406(j)(1) to instead allow a licensed package store to deliver to nearly all “locations outside of the licensed premises”, but nothing in this law or any other law changed the requirement that package stores have a physical retail location that is a “place of business ... for use by the public” (TCA § 57-3-404(f)).

For these reasons, the TABC has determined that all establishments licensed as, or seeking to be licensed as, a retail package store must operate a physical retail location for the sale of alcoholic beverages that is a “place of business ... for use by the public” (TCA § 57-3-404(f)). This physical retail location may not be solely used for the storage of alcoholic beverages or the operation of an online-only alcoholic beverage retail business. The physical retail location must be a retail business open to the public which sells alcoholic beverages and other authorized items to the public at such physical retail business location during standard business hours.